Land Use REGULATION IN SOIL CONSERVATION DISTRICTS

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FOREWORD

Productive land is the most important natural resource of the American people--and all mankind everywhere. It is the main source of their food, clothing, and shelter. The conservation of this resource for sustained, productive use, therefore, is an undertaking of vital concern to citizens in all walks of life.

To provide a means for the people to exercise their ingenuity and responsibility for wise land use, in their own communities, the establishment of soil conservation districts is now provided for under laws enacted by the States.

Since 1937, farmers and ranchers have organized and are operating around 1,750 soil conservation districts in 48 states. These districts encompass more than 945,000,000 acres and about 4,200,000 farms -- better than two-thirds of the farms and ranches of the nation. Additional districts are being organized at a well-sustained rate throughout the United States and in Puerto Rico. With assistance from the Soil Conservation Service, and other public and private agencies, these districts are helping land owners and operators to plan, apply, and maintain conservation on their farms and ranches. Thus the people directly concerned are cooperating to assure a continuing productivity for our land, the source of the nation's food. This is an American way of accomplishing an objective, that is, by a thoroughly democratic method.

Traditionally, whenever and wherever necessary in the public interest, our American way has also provided a method whereby an unwilling few can be required to accede to certain actions taken by the majority. The power of soil conservation districts to adopt land-use regulations is the application of this tried and proved principle to the conservation and use of our farm and ranch lands. It is an action that local land owners and operators may take by majority procedure, through their soil conservation district, when the need arises -- and then only if they desire to do so.

This pamphlet has been prepared as a reference to aid in understanding the regulatory authority of soil conservation districts. It is not intended to encourage or discourage the use of that authority. We hope it will be helpful to farmers and ranchers and to their soil conservation district governing bodies in considering the use of the regulatory power when clearly necessary or not considering it when not necessary.

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Chief

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INTRODUCTION

Soil conservation districts have been organized and are operating in all the 48 states. These districts were organized under state laws, passed by the respective state legislatures. Such laws are known in most states as "Soil Conservation Districts Laws." In enacting them, the various legislatures set forth their determinations: That farm, forest, and grazing lands are basic assets of the states and communities in which they are located, and that widespread land deterioration has resulted in an alarming loss of those assets. They declared it to be the policy of the states to conserve these resources and they passed the soil conservation districts laws to permit systematic attacks on the problem.

The state soil conservation districts laws embody two basic principles: (1) That any effective attack on soil erosion and land deterioration must start in the communities and on the watersheds where the problems originate, and (2) that the local land owners and operators should take the initiative in conservation work and have control of it.

These laws permit but do not require the creation of a district in any community. Districts are organized by local farmers and ranchers through the process of petition and referendum. They are local units of government and have their own governing bodies, composed of local people. Members of the governing bodies are usually known as district supervisors; in some states they are called commissioners or directors. The state governments retain some control of district activities in a few states, but most districts are entirely self-governing.

POWERS OF DISTRICTS

Most of the state laws give soil conservation districts two types of powers: (1) Power to assist land operators in combating erosion on a voluntary, cooperative basis, and (2) power to compel proper land use, where this seems necessary and is approved by a majority of the land owners and operators.

1/ Preparation of this pamphlet began before the outbreak of World War II but was delayed because of more pressing matters, brought on by the war. Acknowledgment is made of early work done on the manuscript by Philip M. Glick, Edwin E. Ferguson, and Harold L. Price, formerly in the Office of Solicitor; David H. Allred, formerly of the Soil Conservation Service; Melville H. Cohee, Cleveland W. Humble, and Lee T. Morgan, of the Soil Conservation Service; and others.

The first class of power is usually called the district's cooperative or voluntary power. It includes the authority to plan for and carry out all types of conservation work that will bring about better use and protection of the land; to cooperative with and accept help from local, state, and federal agencies; and to furnish information to and help land owners and operators plan and carry out conservation work on their lands. Up to the present time, most districts have confined their activities to cooperative work that can be done under these voluntary powers. The conservation surveys, plans, and operations that are carried out under these powers are well known and will not be discussed here.

This pamphlet discusses the second type of power given to districts in most states--the power to adopt and enforce land use regulations, sometimes called conservation ordinances. This regulatory power can be used by a district only with the approval of a required majority of the land owners and operators as expressed at a referendum. Most districts have not used this power. Many may never need to use it, but the authority to do so has been granted under most of the state laws.

This power has been given to districts in order that a majority of land owners and operators may protect their lands and conservation work against the ill effects of land abuse by a minority. It was assumed that most farmers and stockmen would eventually adopt the conservation methods advocated by their district, but that in some instances a few might fail or refuse to assume such obligations, thus endangering the district's conservation program.

Experience has shown that a few careless, indifferent, or intentionally delinquent land operators can seriously obstruct the efforts of the majority who are trying to combat erosion. In some cases, such delinquent operators may completely nullify the conservation efforts of their neighbors. This is especially true where gullies in uncontrolled lands at the top of a slope or watershed pour rock and infertile subsoil on the lower-lying fields of neighboring farms. It is often true in the Great Plains where wind erosion is the main problem. Land use regulations provide legal procedures under which a majority of responsible land operators may compel a careless or indifferent few to use their land in such a way that it will not obstruct the conservation efforts of others.

The extent to which districts will use their regulatory power cannot be predicted. It will depend, probably, on how well land operators accept their obligations, without compulsion. It may be possible that most districts, in states where regulations are permitted, may at some time have occasion to at least consider the use of this regulatory power. There may be demands for regulations from some land operators who think that their lands are being harmed by the negligence of their neighbors. In some instances, regulation may be the only solution for certain land abuses. In others, regulation may seem desirable but not feasible. A few districts already have adopted and are enforcing regulations. In many districts, regulation may have to be considered before the objectives of the long-time district programs are attained.

LEADERSHIP IN DISTRICTS

Leadership in a district rests with its governing body--its board of supervisors, directors, or commissioners. This is true in the formulation of a district program and work plan, and in carrying out voluntary operations. It will necessarily be true also where land use regulations are adopted and enforced, or even if such regulations are proposed for adoption. The board will have to decide whether regulations are needed and when it is appropriate to propose them for adoption. The board has the authority to decide that certain proposed regulations are not necessary or feasible.

Furthermore, the governing body will be responsible for supervising all proceedings relating to the adoption of regulations deemed necessary and feasible. In many instances this may require intensive educational work to show the need for the regulations and to explain the problems that make them necessary. And when regulations are adopted, the district governing body must see to their enforcement.

In the following discussion, some of the specific problems that district governing bodies may encounter in drafting, adopting, and enforcing land use regulations are considered. Only brief discussion of these problems is possible here, but it is hoped this will be helpful and will lead to further study by district governing bodies whenever regulations are being considered.

REGULATORY POWER OF DISTRICTS

SOURCE OF THE POWER

The immediate source of a district's authority to enact and enforce land use regulations is the soil conservation districts law under which the district was created. Most of these laws give this authority to districts and specify how it may be used. The question may arise, however, as to where the state legislature gets its power to authorize such regulations. The answer is that a state is responsible for protecting the health, safety, and general welfare of its citizens and has the power to enact and enforce regulatory measures that may be necessary for discharging that responsibility. This authority is known as the "police power." It is the basis of all state laws that regulate the conduct of individuals in the interest of society as a whole. The respective state legislatures have recognized that the state is responsible for protecting and conserving its natural resources, and the courts have upheld the use of the police power for that purpose.

POLICE POWER OF A STATE

The police power is not, of course, an unlimited one that can be used indiscriminately. The federal and state constitutions contain rigid restrictions aimed at protecting persons and property against unnecessary and unreasonable governmental interference. However, private property rights have always been subject to necessary and reasonable restraints under the police power.

It is contended by some that the owner of land is entitled to use it as he sees fit regardless of the effect on others. That claim is not true, and never has been true, under our form of government. There is no such thing as absolute liberty or license in the matter of personal privileges or the use of property. A property owner is given the widest possible freedom in the use of his property, but all property is held under the implied condition that its use shall not be injurious to the property rights of others or to the welfare of the public. It is an accepted principle of law that ownership or control of property may involve responsibilities as well as privileges.

The need for public regulation of any kind has usually arisen from the failure of some individuals to accept their responsibilities as members of society in matters of personal conduct and in the use of property. If all automobile operators would drive cautiously, speed laws would not be necessary. If all parents would assume responsibility for seeing that their children were educated, compulsory school-attendance laws would not be needed. If everyone were properly informed about the hazards of poor sanitation and conscientiously tried to protect the health of himself and his neighbors, we should not need the numerous sanitary regulations we have. But we have found that speed laws, compulsory school-attendance laws, sanitary and other regulations are indispensable for protecting and promoting the public welfare in this complex society in which we live. Likewise, public necessity may dictate the enactment of laws to protect land against misuse.

Police power applied to land use.-- Soil erosion is a community problem requiring community action. That action must start at the source of the problem and progress with it down the slopes to the streambanks. In many instances, individuals cannot control erosion on their own lands unless their neighbors cooperate. Soil and water washing downhill from one farm can hinder and sometimes prevent control of erosion on farm lands below. Severe soil blowing on one farm frequently spreads to nearby farms, making it difficult or impossible to control wind erosion there. A few careless or delinquent land operators--sometimes one--may largely nullify the conservation efforts of the majority.

There are likely to be individual cases where education, persuasion, and cooperation will fail to induce proper land use practices. Compulsion may be the only means of getting the operators of these lands to use proper conservation methods. If such lands are so located that their misuse harms the conservation efforts on other lands, then compulsion seems justifiable. Clearly, regulations have as vital a place in the conservation of soil and water as in any other activity involving the public welfare.

Other uses of the police power.-- The police power is often exercised by the state itself through boards or commissions. But the legislature of a state has full authority to delegate this power to governmental subdivisions, and often does so. Sometimes it creates new units of government to exercise segments of the police power.

We are all familiar with numerous state laws that impose restrictions on personal and property rights. We accept them as a matter of course. Laws of this kind that have wide application in rural areas include those relating to fish and game, pure food, forest fire protection, weed control, insect control, stock fencing, and restrictions on bathing in ponds and streams. And there are regulations controlling the use of oil, gas, minerals, and other resources. We are familiar also with the many restrictions applied by urban governments under delegations of police power from the state. Examples of such local regulations are building codes, zoning regulations, plumbing and sanitary codes, snow removal laws, smoke abatement and fire protection ordinances, and speed laws. Any similar measures so placing restrictions on the use of land are necessarily land use regulations, just as much so as any regulation soil conservation districts may adopt.

We have numerous examples of laws that create single-purpose governmental units to exercise special segments of the sovereign authority of the state. Such governmental units include school, fire protection, flood control, irrigation, drainage, water conservation, forest conservation, noxious weed control, mosquito control, wildlife, sanitation, and citrus pest control districts. A soil conservation district is simply another type of governmental unit, serving a specific purpose.

DISTRICT REGULATIONS NOT A NEW DEVICE

The foregoing discussion supports the following conclusions: (1) Land use regulations are not a new device, and (2) granting regulatory power to soil conservation districts is not a new method of using a state's police power. The soil conservation districts laws merely prescribe an orderly and democratic procedure for applying that power to a specific set of circumstances. They simply provide rural communities with legal machinery to use in protecting their lands against abuses that are peculiar to rural areas. Such machinery is comparable to that given to urban communities for protecting property against abuses common to urban areas.

SCOPE OF THE REGULATORY POWER

The scope of the regulatory power of districts, as defined in the respective state laws, is broad. Most of the laws permit any reasonable regulation of farm, ranch, or woodland management necessary to prevent and control soil erosion and conserve the soil resource. The power may be used either to prohibit certain harmful practices or require the use of beneficial practices.

Most state laws give examples of the kinds of regulations that may be enacted by soil conservation districts. They suggest regulations that require special methods of cultivation, contour plowing, strip cropping, crop rotation, terracing, and the shifting of steep or erodible land from cultivation to trees or grass. Usually they give general authority for enacting any regulations that may assist in conserving soil resources and preventing or controlling erosion.

Fig. 1. This road is blocked and the pasture is being ruined by blowing soil from abandoned land. During the thirties, on the Great Plains, resident farmers often had to control such idle fields to protect their own lands. Some districts invoked regulations for control of such lands.

Fig. 2. Emergency listing has temporarily checked soil blowing on this barren field in the Great Plains. Some districts have regulations that permit them to do work of this type and charge the cost to the land owner, where it is necessary to protect other land.

REGULATIONS MAY COVER MOST CONSERVATION NEEDS

Regulations may be made to apply to any type of land, whether farm, range, or forest. Moreover, they may be designed to prevent erosion in the future as well as to control active erosion or correct conditions resulting from past erosion. They may even prescribe measures to prevent the development of conditions that might later lead to erosion. For example, in some low rainfall regions certain soils blow readily if the sod is destroyed, and the blowing may spread to nearby lands and harm them. The best means of preventing this is to keep the sod intact. Regulations prohibiting the plowing of such lands, so as to prevent them from becoming hazardous to nearby lands, are permissible.

Most of the state laws specify that the objective of any land use regulation must be to prevent or control soil erosion or to conserve soil and soil resources. The fact that other benefits might result, however, would not make a regulation improper. Sometimes a regulation might appear to be directed at something other than erosion and yet be proper. For example, it is permissible for a district to regulate the grazing of range land if prevention of overgrazing will tend to reduce soil erosion. Regulation of cutting in woodlands would be permissible if the real purpose is to keep enough trees on the land to prevent erosion. Likewise, regulations prohibiting the plowing of grassland, burning of brush and pasture, or grazing of woodlands are permissible where such practices tend to cause erosion.

REGULATIONS MAY BE SIMPLE OR COMPLEX

In some cases regulations may be very simple, requiring only the use or the avoidance of certain common farm practices. In other cases they may be complicated, requiring or prohibiting measures that involve several interrelated factors. The simplicity or complexity of regulations will depend largely on the nature and extent of the erosion problems to be solved. Variations in topography, climate, and physical land conditions may also affect the complexity of regulations. Where the problems exist because of a few obvious causes, they may be remedied by a few simple practices such as contour plowing, crop rotation, or strip cropping. In areas where there are multiple causes or severe conditions, more complicated remedies may be required.

LIMITATIONS ON THE REGULATORY POWER

A district's regulatory power, although broad, is subject to very definite limitations. There are legal limits set by the state laws on the scope of the power and the purposes for which it may be used. There are constitutional limitations on the manner in which the authority may be used. And there are practical limits beyond which its use is not feasible.

REGULATIONS MUST BE FOR SOIL CONSERVATION

Regulations must be aimed at controlling or preventing soil erosion or conserving soil and soil resources. Use of the regulatory power of a district for other purposes is not authorized.

It is true, most state laws declare that among the objects to be achieved by checking erosion are retardation of floods, protection of dams and reservoirs against impairment from silt and debris, maintenance of the navigability of rivers and harbors, preservation of wildlife and other natural resources, protection of public lands, and other things conducive to public health, safety, and welfare. Such broad statements of public purpose, however, do not give districts the authority to adopt measures designed solely to attain these objectives. These objectives can be attained legally, only if the regulations are needed for and have as their primary purpose the prevention and control of erosion or the conservation of soil and soil resources.

REGULATIONS MUST PROMOTE PUBLIC INTERESTS

The federal and state constitutions establish boundaries beyond which public regulation cannot extend. They permit governmental interference with the use of private property only in the case of uses that endanger the public health, safety, or welfare. Hence, land use regulations must be for the protection of such public interests in order to be constitutional.

PRACTICAL LIMITATIONS ON REGULATIONS

In some instances, regulations that would be valid from a legal standpoint may be wholly impracticable. This would be true of an ordinance aimed at an apparent cause of erosion rather than the real cause. It might be true of an ordinance that required the building of expensive structures by land operators who could not afford their construction.

The use of land for agricultural purposes involves not only physical factors but a variety of economic and social considerations. Soil erosion is only one of many problems that face farmers. Land use regulations cannot cure all agricultural ills. They may be an effective implement when improper land use is due merely to the mental attitudes of some farmers or ranchers. But regulation will probably be ineffective if economic pressure or other things make it impractical for farmers to comply. In other words, land use regulations are intended primarily to correct willful neglect.

There is no virtue in regulating merely because you have the authority to do so. Unless regulations can be enforced, it is meaningless to adopt them. You can't expect to enforce regulations against farmers who are unable to comply with them. Such an effort might cause farmers to leave their farms, and thus create still more difficult problems. An example of such a regulation is one that would require tenants with a 1-year lease to plant grass on a considerable part of their cultivated land when they did not have livestock to use the grass or funds to purchase such stock.

It is important to recognize whether the real cause of erosion is the pressure of other problems. If that is the case, regulations will probably be futile until progress has been made in remedying the real

cause. Regulations are a proper device only when most farmers of a district are in a position to comply with them. Necessary and appropriate regulations should not be rejected, however, merely because a few land operators are unable to comply. Specific provisions are made in most district laws to relieve operators on whom any regulation imposes unusual hardships or difficulties. (These provisions are discussed later.)

USING A DISTRICT'S REGULATORY POWER

In the foregoing discussion the nature of the regulatory power of districts has been considered, that is, its source, purpose, scope, and limitations as to use. The following discussion will deal with important factors involved in using the regulatory authority. It will be assumed that serious soil conservation problems exist in a district that is considering the adoption of land use regulations; that the problems can be remedied effectively through the use of specific measures; and that most farmers are using the corrective measures advocated, but others have failed or refused to do so.

WHEN TO USE REGULATIONS

It is important to keep in mind that land use regulations are not the only means by which districts may attain their objectives. As a general rule this implement should be used only after voluntary methods have failed. Before considering regulations it might be wise to find out why voluntary measures have failed. Do all the land owners and operators thoroughly understand the district's program? Have they been properly informed about the seriousness of the problems confronting them? Do they know which conservation measures are needed and how to apply them? If the district has a large number of absentee land owners or operators, do they recognize the situation and the need for correcting it? Is the district governing body convinced that most land operators are able to carry out the proper corrective measures? These and other questions should be probed before regulations are considered.

SOME SITUATIONS IN WHICH REGULATIONS MAY BE ADVISABLE

There are many circumstances under which districts may wish to consider the adoption of land use regulations. The conditions will vary from district to district. But most of the situations that may seem to call for regulations can be grouped into a few broad classes.

A common type of situation calling for regulations will be in a district where a majority of the land operators are using proper conservation measures but a few have failed or refused to use such measures thus making it difficult for their neighbors to carry out an effective conservation program. Here, regulation may be the only practical solution.

Emergencies that call for regulations may arise. For example, wind erosion suddenly becomes serious in a district; it is spreading from

field to field and from farm to farm; immediate and concerted action by all land operators is needed. Most farmers, no doubt, will take the desired action, but there may be a few who will not; or certain idle lands in the district may be contributing to the problem. Under such circumstances, the district governing body is likely to want legal authority to see that the needed corrective measures are applied to the lands not under control. Emergencies may also arise in areas where erosion is caused by water; floods, rapid silting of reservoirs, or other problems may create situations that call for immediate, concerted action that can be achieved only through regulation.

Then, there may be chronic situations that call for more or less uniform action by all land operators that can be obtained only through regulation. It may be necessary in a given area to control erosion on a watershed basis. Proper solution may demand that all land operators act at approximately the same time, or that the lands at the top of the slopes be treated first. To cope with such problems, regulations may be desirable.

Regulation may be the solution to erosion problems on lands that are allowed to lie idle year after year, especially if there are large acreages of such lands in a district. The owners of such idle lands may be waiting for more favorable seasons and market prices or they may be holding the lands for expected higher values, but if these lands are eroding and damaging other property, regulatory control should be in order.

In some instances, regulations may be needed to prevent erosion in the future. For example, where it is known that plowing sodland or clearing woodland for cultivation on certain types of land will lead to destructive erosion that may damage nearby lands, regulation may be in order. Such situations may arise where either wind or water erosion is the main problem.

Regulations need not be confined to cultivated lands. They may be just as advisable for pasture, range, or wooded lands. For example, if overgrazing of range land is causing serious erosion that is spreading from ranch to ranch, regulation of grazing may be the most practical solution. Or if clear cutting of woodlands is creating a serious erosion hazard, regulation of cutting may be advisable. Burning or even grazing of wooded slopes may create problems that call for regulation.

There may be many other kinds of situations in which districts may wish to resort to regulation. The possibilities are too numerous for discussion here.

DECIDING PRACTICABILITY BEFORE PROPOSING REGULATIONS

Before proposing regulations, a district governing body should consider fully such factors as these: (1) The seriousness of the particular conservation problems; (2) whether a majority of the land operators are aware of the seriousness of existing problems; (3) whether the

supervisors and a majority of the land operators are in substantial agreement as to the appropriate measures needed to solve the problems; (4) the costs of applying the recommended practices, and the ability of the land operators to pay them; (5) the possible alternative means and measures for solving the problems; and (6) the attitudes of district land owners and operators toward the use of regulations.

At this point the district governing body should decide whether land use regulations are feasible and practical. If it decides so its members should then proceed to formulate and draft tentative regulations for proposal to owners and operators of land in the district.

FORMULATING TENTATIVE REGULATIONS

The preparation of proposed land use regulations for consideration by land owners and operators may be a painstaking task. Many problems are likely to arise. The district governing body will, doubtless, need to use all its ingenuity and experience in such matters and may need to call for advice from outside sources.

The governing body must not only decide on the type of regulations that will be most practical but must also decide when and where regulations should apply. This will include decisions as to which kinds of land each regulations shall affect and many details as to how and when the requirements are to be carried out.

District governing bodies are authorized to hold public hearings or meetings about regulations, if they wish to do so. In many instances hearings may seem advisable during the early stages of formulating regulations. Public meetings to discuss proposed regulations should provide an opportunity for exchange of ideas among members of the governing body and land owners and operators. Meetings may bring out suggestions for improving the proposed regulation or for substitute measures that would be more practical. It is possible that advance hearings may create so much public interest that the problems can be solved without regulations.

All regulations proposed at any one time need not, of course, be embodied in a single ordinance. There may be good reasons for submitting them as a series of separate ones. For example, the governing body may be confident that public opinion will favor certain regulations but may have doubts as to the popular acceptance of others.

DECIDING HOW MUCH REGULATION IS NEEDED

The kinds of regulations and the land to which they shall apply should be determined largely by the severity of erosion and the conservation needs on the different types of land in a district. Regulations should be used only where necessary to control, correct, or prevent specific conditions. They should not be designed to correct all minor land abuses, thereby unnecessarily regimenting land operators. Nor should they necessarily impose the same types of restrictions on all classes of land in a district.

Districts that find regulations necessary, but have not had previous experience with them, may find it desirable to start with simple ones that meet minimum requirements. It may be advisable at first to propose regulations only for those lands that have very severe erosion problems, and to require only the minimum, essential practices or measures that will check the severe soil losses. Later the regulations can be intensified or extended to other types of land if necessary.

BASING REGULATIONS ON A LAND CLASSIFICATION

Before attempting to draw up any ordinance, the district governing body should have fairly complete information about the classes of land in the district as based on soil, slope, extent of erosion, and other related factors. Governing body members should analyze the problems in relation to the various classes of land in the district, and decide whether the regulations being considered should apply to all lands or only certain kinds of land. They may decide that a specific regulation need apply only to the one or two classes of land on which erosion is most acute. Or they may decide that some regulation is needed on most or all the land in the district. But any regulation must apply with equal force to all land of the class for which it is devised. Hence, a proper land classification for the district may be essential. It should be made as a preliminary step to the consideration of land use regulations.

Land-capability classes.-- In districts that have been operating for several years, conservation surveys have been completed on much of the land with the assistance of Soil Conservation Service technicians. These surveys are being conducted in practically all districts and should be completed in many within a few years. They show the classes of land within a district according to their capabilities--that is, according to what they are capable of producing and to the conservation practices needed. Soil, slope, degree and kind of erosion, and climate are the physical factors on which the land-capability classes are based. The programs and work plans of most districts show the recommended use and the conservation practices needed for each class of land.

Land-capability classes may be used as a guide for proposed land use regulations, provided most of the lands of the district have been surveyed. In a district where such a survey has not been completed, any other reasonable method of classifying land may serve as a basis for regulation. A district may choose to use the land-capability classes as a guide for regulations, even though surveys have not been completed on all lands. In such cases, it will be necessary to complete the surveys before determining all of the specific fields or farms to which the regulations are to apply.

LEGAL CONSIDERATIONS IN FORMULATING REGULATIONS

After a district governing body has decided upon the essential requirements of proposed regulations, it must consider whether those requirements would be legal. The governing body should keep in mind cer-

Fig. 3. These gullies are spreading from farm to farm. The best way to stop such gullies is to start at the tops of the slopes and install control measures on all lands involved. It is possible that regulation may be necessary to get all lands under control.

Fig. 4. When all trees were cut off this slope, erosion soon ruined the land. Silt and runoff from this hill are damaging land and property below. Some districts may wish to regulate the cutting of trees from such steep slopes to prevent future damage like this.

tain constitutional limitations on interference with the use of private property. A land use regulation is, in effect, a local statute, and its validity may be challenged by any land operator it affects. In event of challenge, its constitutionality will be tested by the same standards that are applied in testing the validity of any state law.

The three main points to keep in mind in assuring the constitutionality of a regulation are: (1) Any exercise of a state's police power must tend to promote the public health, safety, morals, or welfare; (2) the means used must bear a substantial relation to the ends sought; and (3) the regulation must not violate the constitutional guarantees against governmental interference with private rights.

As to the first point, the protection of soil resources has been publicly accepted as vitally necessary in the public interest. The second simply means that a regulation must be clearly related to problems of erosion control or conservation of soil resources. In other words, the relationship between the problem and the solution required by the regulation must be obvious or provable in court. It is unlikely that any regulation will be proposed and adopted without meeting these two tests.

The third point -- avoiding undue governmental interference with private rights -- is one that may well bear careful consideration. Unless proposed regulations are carefully considered and worded, their specific requirements may violate constitutional guarantees as to personal and property rights. In the Federal Constitution, these guarantees are found in the Fourteenth Amendment. It provides, among other things, that no state may "deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Similar limitations are found in state constitutions. The "due process" and "equal protection" clauses have been generally interpreted to mean that a police regulation, to be valid, must be reasonable in its requirements and must be impartial and uniform in its operation.

What, then, is reasonableness, in the constitutional sense? When is a regulation impartial and uniform?

Reasonableness.-- There is no set formula for testing the reasonableness of a regulatory measure. "Reasonable" is a relative term, its meaning depending on particular circumstances. What would be reasonable under one set of circumstances could be unreasonable under others. Each regulation must be tested as to reasonableness on its own merits and in the light of conditions that influenced its adoption. Reasonableness depends largely on what is actually necessary to achieve the legitimate objective.

The law seeks to preserve for individuals the widest possible liberty in the use of their property that can be reconciled with the general interests and welfare of the public. Once the need for regulation has been established, a first test of reasonableness is whether the requirements of a proposed regulation are unnecessarily burdensome. In the case of property regulations, the courts sometimes compare the re-

quirements of the particular regulation with possible alternative ones. With a land use regulation, the test might be whether it places more restriction on the use of land than is necessary to prevent or control erosion or conserve soil and soil resources.

Of course, regulations are not unreasonable merely because they impose some hardships. Unreasonableness enters only when the means are too drastic to be justified by the ends sought. For example, if some land in a district is erodible only when clean-tilled, a regulation prohibiting all use of the land would be unreasonable. But a regulation requiring only a shift to some other type of use would probably be valid. Similarly, a regulation requiring the construction of expensive terraces or check dams, when experience shows that strip cropping would be just as effective and less expensive, might be considered unreasonable.

The reasonableness of proposed regulations should be tested in the light of the over-all effect they would have on all lands to which they apply. A proposed regulation need not be rejected merely because its strict enforcement would place drastic burdens on a few small areas of land. As is discussed later, boards of adjustment are provided for and given power to relieve excess burdens arising out of unique circumstances.

Also, a regulation should be drafted in definite terms to stand the test of reasonableness. It should clearly indicate the types of land to which it applies, and state precisely what the operators of those lands are required to do or refrain from doing.

It would be useless to defend a regulation that failed to clearly show each interested person which of his lands were affected, and just what he was expected to do. Where a regulation applies only to croplands, for example, that should be made clear and some indication should be given as to what is meant by croplands. If the application of a regulation is based on some physical characteristic, such as slope, type of cover, or land capability, some means should be provided to show each land operator whether his lands are affected by the ordinance.

Uniformity and impartiality.-- The requirement that regulations must be uniform and impartial means only that they must operate equally on all lands to which they apply. It does not mean that they must apply to all lands in a district or that a district can adopt only regulations that will apply to every farm in its area.

The respective state laws expressly authorize classifications of land on the basis of such reasonably related factors as soil, slope, degree of erosion, cropping and tillage practices, and other pertinent factors. They authorize regulations that vary according to the class of land affected so long as they apply uniformly to all land within that particular class. Reasonable classificationsof land for the purpose of regulation are clearly consistent with the constitutional requirements of uniformity. Only unreasonable or discriminatory land classifications are prohibited. All that is necessary is that the distinctions on which

a classification is based must bear a substantial relationship to the particular conservation problems involved, and that all lands within each class be treated alike.

A simple example is the case of a district in which there are grazing as well as cultivated lands. Separate types of regulations for the two classes might be entirely proper. Likewise, a regulation might properly require specific practices or avoidances on lands of a designated degree of slope and not require them on lands of lesser slope. Also, a regulation applicable only to clean-tilled lands or to wooded lands should be permissible. In some cases it might be possible to formulate a system of regulations, based on land-capability classes, if a conservation survey has been completed over most of the district. The specific requirements probably would vary for each class, according to the conservation needs.

Members of district governing bodies should find little difficulty in meeting the constitutional requirements of uniformity and impartiality if they keep in mind that land classification must be based on differences in land conditions. Distinctions based merely on location, or difference in type of occupancy, usually do not justify different requirements. If there are lands of a particular degree of erodibility throughout the district, a regulation applying only to the north half of the district would be indefensible, other factors being equal. A regulation applying to lands owned by non-residents but not to similar lands owned by residents would also be of doubtful validity; so would a regulation applying to lands owned by corporations but not to identical lands owned by individuals.

Not only must a regulation be uniform and impartial in its requirements, but it must provide a uniform rule of action to assure impartiality in its enforcement. A regulation must not vest unguided discretion in the officers charged with enforcing it. A regulation should not grant the district governing body blanket authority to vary its application or to excuse some land operators from compliance while enforcing it on others. Boards of adjustment are provided for under most of the State acts. They are established for the express purpose of relaxing the requirements of regulations in cases involving special hardship.

A few of the state laws do not provide for Boards of Adjustment. In these cases, district governing bodies may be authorized by the regulations to take some action toward adjusting possible inequalities in their enforcement. In such cases, the regulations should contain a definite standard to guide the governing body in making adjustments.

In some cases a district may find it desirable to consider regulations that would operate under a permit system. For example, there might be a regulation limiting the grazing of livestock to the carrying capacity of lands and requiring a permit from the governing body for the grazing of such lands. Or a regulation might forbid the breaking out of sod land except by permission of the district governing body. In such cases, the regulation should set out a clear rule of action to guide the governing body in issuing or refusing permits.

DRAFTING PROPOSED REGULATIONS

After a district governing body has decided on tentative land use regulations that seem practical, feasible, and legal, it will be necessary to put them in written form. They should be written in language that can be readily understood by the land operators of the district but leaves no doubt about specific requirements and classes of land affected.

Drafting regulations is as technical a job as is the drafting of a zoning ordinance, a building code, or a state statute. A qualified attorney should assist in the drafting process. His help may be needed in considering the legal aspects and in the actual wording of the regulations. Most state laws authorize district governing bodies to call upon the State Attorney General's office for legal assistance. The County Attorney's office should be available in most instances. Where the help of public legal officials is not available, governing bodies may find it advisable to engage private counsel.

While most state laws provide that regulations shall be embodied in a proposed ordinance, no particular form for the ordinance is specified. The matter of form is secondary so long as the terms and conditions of the regulations are clear and understandable. However, the formal parts of a complete ordinance might include: (1) caption, (2) preamble or recital of fact, (3) requirements of the regulations, (4) provisions for enforcement, (5) definitions, and (6) effective date.

CAPTION

The caption serves as a short means of identifying an ordinance. Since most district laws provide that conservation ordinances may be numbered, it is usually possible to head each ordinance simply, as in this example:

Duck Creek Soil Conservation District
Ordinance No. 1

PREAMBLE OR RECITAL OF FACT

Land use regulations, to be legal, must be for the prevention or control of erosion or for the conservation of soil and soil resources. To indicate clearly that the regulations are designed for these purposes, it may be advisable to include a preamble or statement of facts showing that certain erosion conditions or land abuses exist and that the proposed ordinance will help correct them. The statement should recite the existing conditions and indicate why and how they induce erosion or harm the soil. It should show the relationships between the problems and the regulations proposed to correct them.

Such a preamble may be omitted, but might be useful if it becomes necessary to prove the legal validity of the regulations in court. It should help to prove that the regulations are within the scope of the district's power and to show their relationship to the problems they are

Fig. 5. This valuable orchard land has been covered with silt from eroding bean fields two miles away. Such problems can be solved only by community action. Some districts may wish to consider regulations to prevent such needless damage as this.

Fig. 6. Silt, from eroding lands above, has made this reservoir useless. Many kinds of public property are damaged or ruined by erosion from farmlands. Regulation in interest of the public welfare is legal in most districts. It may be necessary in some cases, if other means fail.

designed to meet. Furthermore, it may help to explain the nature and objectives of the regulations to the land operators of the district.

REQUIREMENTS OF THE REGULATIONS

A statement of the requirements of the regulation is the essential part of an ordinance and should, therefore, be fully prepared. The requirements should be so clearly expressed as to leave no doubt whatsoever about the specific measures or practices required or prohibited or about the lands to which they apply. If a regulation involves a land use classification, then the classes of land should be defined or some other means provided whereby any land operator may determine whether his lands are in the affected classes. Any other factors affecting the application of the regulation must be clearly defined, or instructions should be given as to where needed information about them may be found.

Besides being difficult to enforce, a regulation that does not show clearly what it requires may defeat its own ends. For example, a regulation would be poorly drawn if it simply required the building of terraces on lands of a certain slope and did not indicate the correct distance between terraces. A farmer could comply with such a regulation by building a few terraces entirely too far apart to be effective.

Some regulations will be easier to draft than others. For example, a simple regulation might merely prohibit the grazing of farm woodlands occupying slopes in excess of 5 percent; require the planting of grass or trees on all lands of more than 10 per cent slope; or prohibit the plowing up of sod on all lands of certain defined classes. Other regulations may be more complex, requiring complicated directions. They might establish land-capability classes and specify different required practices or avoidances for each of the several classes. Or they might set up a system for determining grazing capacities of ranges and a procedure for the issuance of grazing permits.

As previously stated, all regulations proposed at one time need not be contained in a single ordinance.

ENFORCEMENT PROVISIONS

Methods for enforcing land use regulations are set forth in general terms in the state districts laws. Hence, there is no legal necessity for their being contained in a district ordinance. But the drafters of regulations will often find it desirable to describe the procedures that will be followed in enforcing the specific regulations.

An enforcement section in an ordinance may serve as a practical means of informing all land operators about what to expect in case of delinquency. It seems especially advisable to explain enforcement procedures in the first ordinances enacted in a district.

Such a section may set forth the enforcement policies or methods that the district will use. For example, it may explain the procedures

that will be used in notifying or warning land operators of the intent to resort to court action for enforcement. It may explain what methods the district will use in performing work on delinquent lands and how the cost of such work will be collected. It may specify the time limits between notification and court proceedings, or between court authorization and execution of work or application of penalties. Any other provision for enforcement may be explained if the governing body deems it appropriate.

DEFINITIONS

If all terms used in the regulations can be readily understood by most land operators, definitions may be unnecessary. If some terms are technical or are employed in an unusual sense, it may be advisable to define them clearly.

Such terms as "crop residue," "close-growing crop," "wind stripping," "field stripping," "contour furrowing," "contour listing," "carrying capacity," and "land-capability class" are more or less technical and may have different meanings to different people. For example, the term "crop residue" may be taken by some operator to mean the stubble and roots of the crop while intended in a regulation to include also the cut straw or stalks. Some operators may fail to distinguish between "contour listing" of cultivated lands and "contour furrowing" of pasture lands. Unless the district's educational program has been unusually intensive, such terms need definition if used in stating the requirements of a regulation. And even non-technical words or phrases, such as "land operator" or "land occupier" might come in this class. Likewise, such legal terms as "due notice" and "petition for variance" may need definition.

The district governing body should be able to determine which terms used require definition in order that their meaning may be clear and understandable to land operators and courts.

EFFECTIVE DATE

Ordinarily an ordinance will take effect immediately upon adoption, in the absence of a special provision prescribing its effective date. In certain instances, however, supervisors may wish to make a regulation take effect at some later date. If they are to take effect at a later date, a provision should be inserted in the ordinance in some such form as this:

> "The regulations prescribed in this ordinance shall become effective March 1, 1947."

If desired, the provision may be so phrased as to make different regulations in an ordinance take effect on different dates.

ADOPTING REGULATIONS

The responsibility of a district governing body does not end with the drafting of proposed regulations. The regulations must be approved

by a specified majority of the district land owners and operators voting in a referendum before the governing body has power to enact them. The majority vote required ranges from 51 to 90 percent in the various states. In some states all land owners and operators are eligible to vote; in others, only landowners; in most states, all actual farmers and ranchers are eligible.

Like all laws or police regulations, land use ordinances will be valid only if all statutory requirements are complied with. Those requirements are clearly set out in the respective state laws. As mentioned previously, the holding of hearings or meetings on proposed regulations is authorized; however, this is optional with the governing body. On the other hand, there are some mandatory provisions, such as those requiring the governing body to give due notice of and hold a referendum and those prescribing the percentage of favorable vote. These should be strictly observed.

PUBLIC HEARINGS

Land owners and operators are not likely to vote upon themselves and their neighbors land use regulations that they do not understand. Nor are they likely to vote for regulations until they are convinced that such compulsory measures are necessary to solve their problems. Hence, all those eligible to vote in a referendum should be fully informed about the proposed regulations and the need for them. Normally one of the most effective ways to inform all concerned about these matters will be to hold public meetings. Such meetings are usually known as "public hearings" and are specifically authorized in most of the state laws.

Public hearings may be simply a series of informal meetings. They may be held at any time during the formulation of tentative regulations or after the regulations are drafted in their final form. They should be held at times and places convenient to all who may be affected by the proposed regulations. They should be widely advertised by mail, newspapers, radio, circulars, or other means. They should be so conducted that all interested persons will have an opportunity to inform themselves about the requirements of the regulations and the need for their adoption.

The governing body, when holding such hearings, should be fully prepared to explain the extent and seriousness of the local land use problems. They should plan to explain the efforts that have been made to solve them, by voluntary and cooperative means, and to show why voluntary efforts have failed and why compulsion seems necessary. They should explain fully the requirements of the proposed regulations and how they will tend to solve the problems. Also, they should explain the ways and means that will be used to enforce the regulations, and the consequences of noncompliance. The governing body should have at hand accurate, reliable information about these matters and should be able to present it in a clear and convincing manner. The members may be called upon to explain such matters as the source and scope of the district's

regulatory power, and the safeguards surrounding its use. If it is deemed necessary, they should have specialists present to discuss these various subjects and answer questions regarding them.

All persons likely to be affected by the regulations should be encouraged to express their views and ask questions at public hearings, and such questions should be given full and accurate answers. Any suggestions offered for improving the proposed regulations should be welcomed and given due consideration. Also, all interested persons should be permitted to express their opinions as to why they are for or against the regulations. The chairman of the meeting, however, should feel free to stop anyone from speaking if it becomes obvious that he is not seeking information but is merely trying to obstruct the meeting and thus prevent others from obtaining accurate information.

The amount of educational work needed will vary from district to district. In some cases, very little may be necessary. This is likely to be true in areas where erosion is spectacular, the proposed regulations are simple, and most land operators are already practicing methods the regulations would compel. In other cases, although the district governing body may see an urgent need for regulations, it may have a difficult time in convincing a majority of land operators that they are necessary. This might happen in newly formed districts where erosion damage is not conspicuous.

Preliminary Hearings.--As previously stated it may be advisable to hold public hearings before the proposed regulations are drafted in their final form. In such cases the main objectives probably will be: (1) to inform land operators of the district about the problems and the need for regulations and (2) to get ideas from them as to changes in those proposed. Such hearings may be highly desirable under certain conditions--especially if the governing body believes that considerable opposition to the regulations may develop.

Land operators who are inclined to oppose any form of regulation may change their attitude if they come to feel that they have helped to formulate the regulations. Also, a great deal of educational work can be done in preliminary meetings. Furthermore, the governing body may get some very constructive ideas on improvement of the proposed regulations from the land operators attending such meetings. Advance hearings, even though informal, should be well advertised. They should be held at points that are readily accessible to all the land operators.

Final hearings.-- In some instances further public hearings may be needed after the regulations have been drafted in final form. This may be true where substantial changes have been made in tentative regulations, after the preliminary hearings, or where it is felt that further educational work is needed. The objectives of such hearings should be (1) to explain accurately the exact provisions of the regulations to be voted on and (2) to enlist the aid of land operators in obtaining their adoption.

REFERENDA ON PROPOSED REGULATIONS

When the governing body is ready to submit proposed regulations to a referendum vote, it must first give public notice of the referendum. The various statutes prescribe generally the type of notice and how it must be published. These provisions should be strictly complied with. Usually the notice should state the contents of the proposed ordinance or tell where copies of it may be examined.

The various state laws also prescribe who is entitled to vote in referenda and what form of ballot is to be used. Very few laws, however, spell out in detail the methods for holding a referendum. Instead, they direct the district governing body to supervise the referenda and to prescribe the rules governing them. It is important that these rules assure a fairly conducted referendum. A challenge that a referendum was conducted unfairly or that due notice was not properly given may result in an ordinance being declared invalid.

There is no set pattern for rules on conducting referenda. The rules should provide, however, for such matters as the designation of voting places, the appointment of polling officers, the distribution of ballots and election facilities, and the issuance of voting instructions. They should also designate the procedures for casting ballots, testing the eligibility of voters, disposing of spoiled ballots, counting ballots, and canvassing returns. A method of absentee voting should be provided. Some districts may have many eligible voters who do not live within it but who will be vitally interested in any proposed regulations. They should be given a voice in determining the regulations that may affect their lands.

ENACTMENT OF REGULATIONS

If the required majority of persons voting in a referendum fails to approve a proposed ordinance, the governing body has no authority to proceed further. If the vote is favorable, they may proceed to enact the ordinance into law, although they are not required to do so under most of the state statutes. In other words, a favorable referendum vote authorizes but does not require the enactment of a regulation.

For various reasons the district governing body may consider the enactment of a regulation inadvisable even though it has received a majority vote. A close vote may disclose less support for the regulation than was thought to exist. Such lack of support may suggest real difficulties in enforcing the regulation. In such a case, the governing body may not consider it feasible to adopt the particular ordinance. It may prefer to draw up a new ordinance that would be more generally accepted. The number of eligible voters who express themselves in a referendum may be so small that the governing body considers it inadvisable to attempt to enforce the ordinance. In such a case, it may decide to wait until there is evidence of greater interest.

Declaring regulations adopted.--If a proposed ordinance is adopted, the district governing body should give public notice to that effect,

although this is not legally necessary. The requirements of the ordinance, its effective date, its enforcement provisions, and the fact that it has the effect of law throughout the district should be made clear. Copies of the ordinance should be available to all land owners and operators in the district.

VARIANCES FROM REGULATIONS

Land use regulations, like other laws, are likely to impose hardships on some individuals. It will be difficult to prepare a regulation that is strict enough to do much good toward controlling erosion and still not impose some hardships on a few land operators. Strict application of some regulations to certain tracts of land may result in unnecessary hardships or great difficulties. Under extreme circumstances, it might prevent a reasonable use of certain lands. Some lands, because of their situation, topography, or unique characteristics, will not fall into the general pattern. All such circumstances cannot be foreseen; and even if they can, it may be impossible to draft regulations that will fit all individual farms and every tract of land in a district. Hence, provisions are made to vary the requirements of regulations in special cases of hardship, without completely lifting the requirements.

BOARDS OF ADJUSTMENT

Most state laws authorizing land use regulations require the establishment of boards of adjustment in districts that adopt regulations. These boards are established to grant variances from the regulations where strict enforcement seems unnecessary or impractical. They are authorized to accept petitions for variances presented by land operators who feel that strict application of the regulations to their lands would be unjust. And they are authorized to grant relief to such petitioners, if they find that strict enforcement of the regulations would cause "unnecessary hardship" or involve "great practical difficulties." A close precedent for this procedure is found in the adjustment provisions of the various city zoning laws, which have proved effective in avoiding unnecessary inequities and litigations.

Membership of boards.-- Most state laws provide for boards of adjustment consisting of three members. These members are appointed by the State Soil Conservation Committee, Board, or Commission, with the advice of the district governing bodies. State committee members and district governing body members are not eligible for membership on the boards. No qualifications are set up by law for board members in most states, but great care should be exercised in recommending and appointing them.

The function of a board of adjustment is a very important one. Its power to relax regulations in proper cases is one that should be exercised with caution. The board should be impartial and fair to those who are entitled to relaxations of regulations; it should be strict and impartial, also, in refusing to alter regulations for persons who simply

are being inconvenienced or are trying to evade the law. The most perfectly drawn regulations may become ineffective through an unwise or improper use of the board's power. Every improper variance is a leak in a regulation. It does not take many such leaks to seriously impair the value of the regulation.

The members of a board of adjustment should be selected as carefully as are the judges of local courts. They should be capable of making purely impartial decisions and of distinguishing between real hardship and mere inconvenience. They should also be capable of determining whether the particular hardships under consideration can feasibly be relieved without violating the spirit of the regulation.

Duties and powers of boards.-- A board of adjustment has only one function--to receive and act on petitions for the variance of regulations. It may be difficult, however, to perform this function in such a manner as to grant the needed relief without defeating the purposes of the regulations. The task is especially difficult because of the extent to which discretion must enter into all decisions.

A board of adjustment is not a legislative body, and this fact must constantly be kept in mind. It does not have the power to revoke or modify any regulation in its over-all application. It has power only to modify the requirements of regulations in order to relieve excessive hardships in individual cases. It can do this only when such a variance will not violate the intent of the regulation.

Rules and records of boards.-- Most state laws do not set forth specific rules for the functioning of boards of adjustment, they direct the boards to adopt rules to govern their proceedings. Such rules must be consistent with the purposes of the act and the particular regulation and should be adopted before a board attempts to act on any petition. This is essential. Should a board's action on any petition be challenged, a strong point to support its action would be a showing that it has acted impartially under rules previously established. There is no standard pattern for such rules. But they should cover such matters as petitions, notices, service of process, manner of conducting hearings, making and recording findings, and keeping records.

Most of the laws require that boards of adjustment keep records of their proceedings. This is not generally regarded as requiring verbatim stenographic records. A reasonable report of the essential facts should be sufficient. But for every case that comes before it, the board should include all the pertinent evidence and its findings in the record.

There are few precedents for a board to go by in adopting a system of rules and records for its proceedings, because few districts have adopted regulations up to this time. A new board of adjustment, however, might well study the procedures of zoning boards of adjustment in nearby cities.

Each case must be decided on its own merits.-- No two sets of circumstances will be exactly alike. A board must consider every petition

for variance on its own merits and not attempt to follow any system of precedents. A decision of a board cannot be justified simply because it follows a prior decision made on what seems to be the same circumstances. Each variance must be justified by facts or circumstances peculiar to that specific tract of land or its operator. In city zoning cases, the courts have stressed the need for considering the merits of each individual case. They have upheld boards who have made different decisions on cases that seemed to be alike but showed slight differences of circumstances on close inspection. It seems logical to expect that the courts will adopt the same attitude toward decisions made by district boards of adjustment.

Basis for making decisions.-- When a petition for a variance is filed, the board will usually make its decision on the basis of testimony and evidence produced at a hearing. In some cases, however, it may be advisable to view the lands involved. In all cases the board should make a thorough study and consider any evidence that seems to have a bearing on the case.

Each decision of the board must be based upon its findings as to the existence or nonexistence of great practical difficulties or unnecessary hardships in the individual case. It will have authority to make decisions only upon that basis.

What, then, is a "great practical difficulty" or an "unnecessary hardship"? It is, of course, impossible to define these terms precisely. They are relative terms, and their meaning depends on the facts or circumstances involved in the particular case being considered. If we use the intent of the various state laws as a guide, however, it seems that these two terms mean difficulties or hardships out of proportion to the ends sought.

A case is not likely to come before a board unless the petitioner believes he can show that undue difficulty or hardship would result in the application of the regulations to his land. Hence it will normally be the task of the board to decide whether the burdens imposed are in excess of those necessary and whether the land operator is able to bear them.

In some cases the board may consider the oppressiveness of the measures required as compared with less burdensome ones that would be just as effective. Some petitioners may claim that they are unable to perform the required work in the specified time. Others may claim that necessary equipment or materials are not available. The location of the lands under consideration and their relation to nearby lands may be an important factor. Likewise, the erodibility of the lands as compared with that of other lands in the district may influence a decision. These are only sample considerations--there are a multitude of others.

In any event, boards of adjustment are not authorized to simply relieve hardship as such. The hardship must be one that is out of pro-

Fig. 7. This formerly good range has been almost ruined by overgrazing. Now, it furnishes little forage but contributes large amounts of silt and runoff to damage other lands downstream. It is possible that some districts may wish to regulate grazing under similar conditions.

Fig. 8. This land has lain idle for years. Runoff and silt from it damages good lands below. Land like this may be a public menace. Some districts may wish to consider regulations that require the planting of grass or trees on such idle lands.

portion to what is necessary to correct the particular problem. A board would not be justified in granting a variance solely to preserve the most profitable use of a tract of land. Lessening of earning power is not an unnecessary hardship in the eyes of the law. A variance should not be authorized solely on the ground that the land involved had been bought without any knowledge of the regulations.

Kinds of variances allowed.-- If a board decides that great practical difficulties or unnecessary hardships exist in a particular case, it must then decide what variances from the regulations should be allowed. Variances should afford the necessary relief while preserving the spirit of the regulations and protecting the public interest.

An example of a simple case is one in which the regulations call for one type of erosion control practice while the land operator is carrying out another practice that is just as effective. For example, a regulation may require terracing of certain lands while the operator is carrying out contour strip cropping, and the board may find that the strip cropping is giving his lands and neighboring lands adequate protection. Enforcing the strict letter of the law in such a case would obviously be unjust. Proper relief might well permit the petitioner to continue the methods he has been following.

Granting proper relief may not only permit alternative practices that an operator is already carrying out but also involve helping him to find some alternative method. In some cases, proper relief may involve relaxing the regulations on part of a farm while preserving them on the remainder. In others, relief may take the form of suspending a regulation, or permitting an alternative system of farming, during a stated period. Variances of this sort may frequently give land operators time needed to obtain necessary equipment, materials, or financial assistance, or to make necessary readjustments in farming methods. In rare instances it may be appropriate or even necessary to relax regulations to the point of suspending them on particular lands.

Decisions should not be changed without new evidence.-- The board should make a careful study of all testimony and evidence involved before making a decision. After the decision has been made, the board has not authority to recall the case and make another decision except where new facts are brought to its attention.

APPEALS TO COURTS

A person whose petition for relief has been denied by a board of adjustment, or one who is not satisfied with the relief granted, may petition a court for a review of the board's decision. The district governing body also may obtain such a review if it is not satisfied with a board's action. In such cases a record of the hearing before the board will be filed with the court. The court will then cause notice to be served on all interested parties. It will review the evidence on which the board's decision was based and will normally make its decision on that evidence. Ordinarily, the court will admit new evidence only if

it can be shown that the evidence was not presented at the board's hearing because of extraordinary circumstance.

The court may grant any temporary relief that it thinks proper and may make a final decree upholding, modifying, or setting aside, in whole or in part, the order of the board. The jurisdiction of the court in these cases and its decree are final except that they are subject to review in the same manner as are other decrees of the same court.

ENFORCING REGULATIONS

The task of enforcement may be difficult and very distasteful at times. Yet enforcement is necessary if the regulations are to be effective and accomplish the purposes for which they are enacted. It would be much better not to adopt regulations than to adopt them and then permit flagrant violations.

METHODS OF ENFORCEMENT

At least two methods of enforcement are commonly provided. One authorizes a district governing body to petition the appropriate court for an order requiring a land operator to comply with the regulations. In cases in which the performance of work is involved, a district may petition the court for authority to perform the necessary work at the expense of the land owner or operator if he fails to obey the court order. If the regulation is one that prohibits doing something, the court may direct the land operator to refrain from doing it; if he disobeys the order he will be in contempt of court. This method of enforcement is used primarily to obtain compliance with regulations in the present or the future.

A second method, authorized in most states, makes the violation of a regulation a misdemeanor punishable by a fine. The shortcoming of this method is that punishing the land operator may not get the necessary work done. However, it may be the only feasible method of checking frequent or flagrant violations. The existence of the power to prosecute violations by imposing a fine may have the effect of discouraging violations.

A third type of provision is found in some of the state laws. It authorizes districts to pass ordinances under which one land operator may recover damages from another who violates a regulation and in doing so causes damage to the first operator's land. An ordinance of this type may be general and apply to all regulations, or may apply only to specified ones. While this type of provision is not, strictly speaking, an enforcement measure, it does offer some protection to land operators against the results of willful or careless neglect on the part of neighbors. However, it has its limitations. Some farmers may hesitate to sue their neighbors except in cases of extreme damage. Moreover, damage to lands as a result of erosion on other lands is frequently a gradual process, the effects of which may become noticeable only after long continuance. Thus the cost and inconvenience of taking a case of this type to court may exceed the value of the actual damage that an injured land operator can prove at any one time.

STEPS PRELIMINARY TO ENFORCEMENT

It may be difficult at times for a district governing body to decide what action to take in cases of purported violations. In no case should it attempt enforcement through legal process until it has thoroughly investigated all circumstances.

The district governing body should determine such matters as the extent and seriousness of the nonobservance and the reasons why the land operator has disregarded the regulation. Perhaps he may not understand what it requires. From a strictly legal standpoint that is not a defense against the charge of noncompliance, but from a practical standpoint it might be. He might observe the regulation if he understood the reason for its adoption and the effects of his noncompliance upon his neighbors and upon the district program as a whole.

Farmers may understand regulations but be unable to comply with them because of lack of technical knowledge or skill. This, again, is not legally an excuse for noncompliance, but the district may assist in procuring the technical help needed. In other cases land operators who understand the regulations and have all the necessary technical skill may be financially unable to put them into effect. The district may have resources with which to help such delinquent but willing operators.

The governing body may find cases in which compelling strict compliance with regulations would apparently cause excessive difficulty or unnecessary hardship. In such cases the governing body should advise the operator of his right to petition the district's board of adjustment for variances. If practicable the board's decision should be awaited before attempting to enforce the regulations through court proceedings.

Some farmers may understand the regulations, have the technical skill and means to comply with them, be unable to show that they would sustain excessive hardships in meeting the requirements, yet still refuse to comply, with complete disregard for the effects of noncompliance on the lands of neighbors. In these cases the prescribed enforcement procedures are likely to be the only avenue open to the governing body. In some instances a notification of the district's intention to take court action, however, may be sufficient to cause compliance.

MECHANICS OF ENFORCEMENT

By Court Order.--Once the governing body decides to seek a court order, it should obtain the assistance of an attorney and present all the facts to him, so as to enable him to prepare appropriate pleadings and attend to other related matters. In most states, the attorney general or the county attorneys will assist the district. Or a district may wish to employ private counsel.

The petition presented to the court should allege the adoption of the ordinance containing the regulations and allege the failure of the defendant to observe their requirements. It should also allege that

Fig. 9. Where all farms of an area have complete conservation programs, as those shown here, regulation will probably never be needed. If regulations seem necessary, however, there should be little trouble in getting the required favorable vote for their adoption.

Fig. 10. Land operators and owners are being handed ballots at a district referendum. There are no set rules for holding referenda on land use regulations, in most states. Districts are required, however, to hold a fair referendum before adopting regulations.

such nonobservance not only is tending to increase erosion on his lands, but also is interfering with the prevention and control of erosion on other lands in the district. The last-mentioned allegation is important because enforcement by court order is permitted only where noncompliance by a land operator is affecting lands in the district in addition to his own.

After the petition is presented, the court will cause process to be issued against the defendant, and will either hear the case or appoint a referee to take evidence and report his findings of fact and conclusions of law to the court. The district must be prepared to furnish proof of the allegations in the petition. Proof of the adoption and text of the ordinance can be furnished from the records of the district, certified in such manner as may be required by the law of the particular state. The governing body or its representatives who investigate the case should be in a position to testify fully as to the defendant's violation. If necessary, the governing body should be prepared to furnish witnesses, such as neighboring farmers and agricultural experts, who can testify with certainty concerning the effect of the alleged violations.

If the court finds in favor of the district, it probably will enter an order requiring the defendant to comply with the regulation. The order may provide that, upon his failure to comply within a reasonable time, the district can enter the lands involved and do the necessary work and recover the costs from him. In such a case the supervisors should give the land owner or operator some written notice of their intention to commence the work within a stated time, although such notice is not legally necessary.

In performing work under a court order, the district should keep the cost of the work as low as possible. After the work is done the governing body should furnish an itemized statement of its costs to the attorney for the district. He may petition the court for a judgment against the defendent in the amount of the costs together with interest, court costs, and a reasonable attorney's fee. Usually, the amount of the judgment will be collected in the same way that any other money judgment is collected in the particular state. In a few states, districts are authorized to certify the amount of the judgment to the local tax collector; such amount then becomes a lien on the lands involved and is collectible in the same manner as general taxes against the land. Upon the collection of any such judgment, the proceeds will be paid over to the district for deposit in its general fund.

If a regulation prohibits something and does not involve the performance of work, the court order may merely direct the discontinuance of the prohibited act. Then, the district governing body should keep informed as to the defendant's compliance with the order. Should he fail to comply, the court should be so informed. It may then declare the operator to be in contempt of court and subject him to a fine.

Applying the misdemeanor penalty.--As mentioned above, it seems unlikely that districts will frequently resort to provisions making the

violation of a regulation a misdemeanor. When a governing body decides that such action is necessary, ordinarily it will consult the local prosecuting attorney with a request that the land operator be prosecuted under the state laws governing the prosecution of misdemeanors. The district should be prepared to furnish such information, data, and witnesses as the prosecuting attorney may consider necessary.

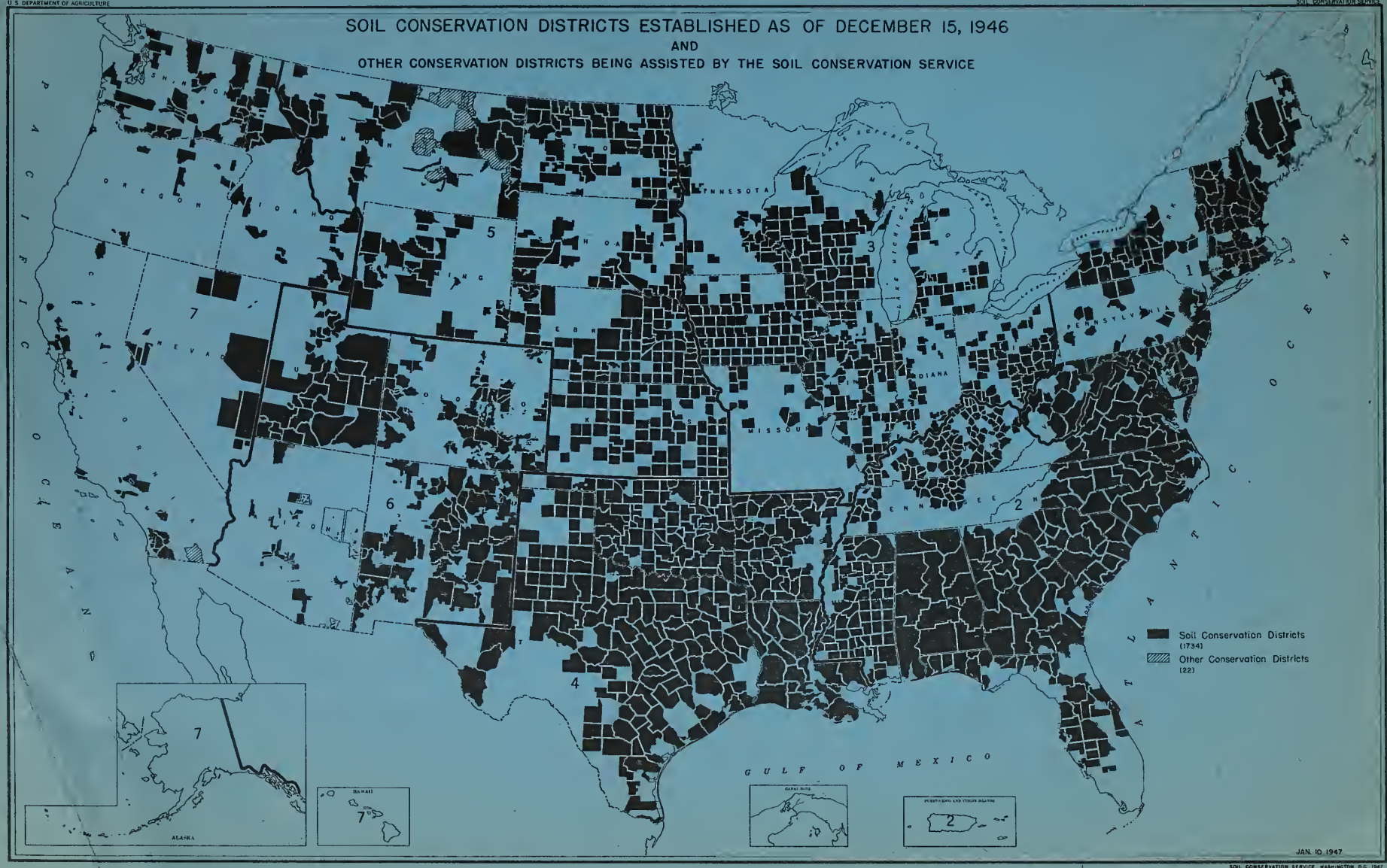
REPEALING, AMENDING, OR SUPPLEMENTING REGULATIONS

The state laws that authorize the adoption of regulations contain provisions under which they may be amended, supplemented, or repealed. Usually, to initiate such an action, one or more land operators must file a petition with the district governing body requesting the desired action. A petition may ask for the elimination or change of one or more of the requirements in an ordinance; or it may ask for the outright repeal of an entire ordinance. In any event, the action desired should be stated clearly in the petition.

Most acts expressly direct that proceedings for amending, supplementing, or repealing ordinances must be in accordance with the methods specified for their adoption. This means that a regulation cannot be changed or repealed until a referendum has been held on the question.

A proposal for changing or repealing a regulation should be weighed carefully by the district governing body. If outright repeal is sought, and the governing body feels that there is still a real need for some form of regulation, they may find it expedient to devise and propose some alternative requirement. Here again, as in the case of original proposals to adopt regulations, the governing body will be responsible for obtaining public understanding of the proposals, and it may find the holding of hearings advisable.

SOIL CONSERVATION DISTRICTS ESTABLISHED AS OF DECEMBER 15, 1946
AND
OTHER CONSERVATION DISTRICTS BEING ASSISTED BY THE SOIL CONSERVATION SERVICE



JAN. 10 1947